



Canadian Nurses  
Protective Society

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## Legal Status of an Apology

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Most Canadian provinces and territories have enacted legislative protection for those who apologize for their actions. British Columbia was the first to bring in an *Apology Act* in 2006, with others following suit quickly afterwards. Some provinces enacted a statute called the *Apology Act*, whereas others amended existing legislation, e.g. an Evidence Act, to include protections for apology. Apology provisions tend to be very brief and do not specify any particular subject matter of apology to which they apply.

The key concepts embedded in the statutory provisions to protect apology are that:

- saying sorry does not constitute an admission of fault or civil liability;
- an apology is inadmissible in any judicial or quasi-judicial court proceeding as evidence of fault or liability; and
- the insurance coverage for the person or entity offering an apology is unaffected by an apology.

For health care professionals, the significance of apology legislation arises when a critical incident occurs. Despite great efforts, patients can be harmed by the provision of health care services. Afterwards, health care providers and administrators must ensure patients are informed of what happened if the incident meets the criteria set out in legislation governing critical incidents or adverse events.

Historically, offering an apology was fraught with difficulty for several reasons, one of which was fear of an inference of legal liability when none was intended or warranted. Nurses and other health care professionals have stated they empathized with their patients very much after a critical incident and wanted to express sympathy but were discouraged from doing so for fear that it would be interpreted as an admission of guilt. Other reasons included fear of loss of insurance coverage or liability protection if an apology was offered and the fact that the persons disclosing to a patient may not be those who were involved in the incident, for example, a hospital administrator apologizing on behalf of a nurse employee. The nurse would then not have any control over what was said. Conversely, if an employee undertook to offer an unauthorized and possibly inappropriate apology, the employer might have been placed in legal jeopardy. Patients had reported that it added insult to injury in the aftermath of a critical incident when no apology was forthcoming; it seemed that no one cared.

A meaningful apology can assist patients, affected families, and health care professionals to heal after the event. There are many ways in which early resolution between parties is encouraged in the justice system. Apology legislation is one such way, and is seen as one element of provincial and territorial patient safety legislation.

Nurses must be mindful that apology legislation does not disentitle a patient from launching a civil action or making a complaint to a regulatory body. The burdens and

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standards of proof remain unchanged, as do the legal remedies. Therefore, an admission of fault should be avoided, primarily because:

- experience has shown that the actual cause of an adverse event is often not what it first appears to be and indeed may never be established. By admitting to an error or breach of a practice standard too soon, nurses may be taking responsibility for something that ultimately will be found to have another cause or an unknown cause;
- although an apology may not be admissible as evidence of fault or liability, it could still be admitted as evidence for another purpose, for example, to show what nurses did in response to the adverse event, such that the fact an apology was made would still be before the Court; and
- an apology may be admitted as evidence if the protections for apologies in a particular jurisdiction do not apply to the legal proceeding underway.

Courts and tribunals have considered the effect of legislative provisions protecting apology. When an apology has been made in the course of a legal proceeding covered by that jurisdiction's apology legislation, the apology has been insulated from use as evidence of fault by the party who apologized. However, the fact an apology was offered has been used in some cases as evidence of what the parties did. The fact an apology was made can also be recorded in the written reasons for the legal decision. An example of how a tribunal considers the fact an apology was made comes from a situation in which a patient complained about a registered dietician's care. The tribunal acknowledged the purpose of the provincial *Apology Act* and did not infer guilt from the registered dietician's apology, saying in its decision:

...it is worthy to note that the intent of this Act, at least in part, was to promote the openness of health professionals in dealing with patients or family members. We prefer to view the [registered dietician's] letter in this light rather than as an admission of guilt. In our opinion, the words of the [registered dietician] showed that she acknowledged the seriousness of the situation and expressed remorse "if" she failed to deal with the [patient] in a sensitive manner.<sup>1</sup>

## Best Practices Regarding Apologies

- the legislative requirements and your employer's framework for critical incident investigations and disclosures should guide your actions during and after an adverse event
- in collaboration with other members of the treatment team, it is part of the nursing role to help your patient understand what is happening to him or her when a critical incident or adverse event is unfolding.<sup>2</sup> Do not speculate to the patient about information that is unknown to you. Regret or sympathy may be expressed at this time but care providers should refrain from accepting or assigning blame.
- understand the possible implications for yourself prior to apologizing to a patient, if you are asked to do so

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1. *D.P. v. P.B.*, 2011 CanLII 11785 (ON HPARB).
  2. *infoLAW*<sup>®</sup>, Reporting & Disclosure of Adverse Events (Vol. 17, No. 1, October 2008).

**Related infoLAWs of interest:** Patient Safety, Reporting and Disclosure of Adverse Events.  
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